

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SAN FRANCISCO COMMUNITY COLLEGE)
DISTRICT,)
)
Employer,) Case No. SF-R-713
)
and) Request for Judicial Review
) PERB Decision No. 1068
LABORERS' INTERNATIONAL UNION OF)
NORTH AMERICA, AFL-CIO, LOCAL 261,) PERB Order No. JR-16
)
Petitioner.) March 1, 1995
_____)

Appearances: Liebert, Cassidy & Frierson by Jeffrey Sloan, Attorney, for San Francisco Community College District; Neyhart, Anderson, Reilly & Freitas by William J. Flynn, Attorney, for Laborers' International Union of North America, AFL-CIO, Local 261.

Before Carlyle, Garcia and Johnson, Members.

DECISION

CARLYLE, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request by the Laborers' International Union of North America, AFL-CIO, Local 261 (Local 261) for PERB to join in seeking judicial review of San Francisco Community College District (1994) PERB Decision No. 1068 (San Francisco).

In San Francisco, the Board adopted the Board agent's proposed decision which denied Local 261's petition for recognition of a bargaining unit of gardeners and nursery specialists employed by the San Francisco Community College District (District).

LOCAL 261'S REQUEST FOR JUDICIAL REVIEW

Local 261 alleges that this case is one of "special importance" within the meaning of Educational Employment Relations Act (EERA)¹ section 3542(a) as:

. . . it raises the interrelationship of the EERA with the Meyers-Miliias-Brown Act ("MMBA"), Government Code Section 3500, et seq, where the covered employees have two joint employers, one of which is an MMBA employer (the City and County of San Francisco) and one of which is an EERA employer (the San Francisco Community College District.).

Local 261 further states in its brief:

Direct judicial review will allow the parties to seek direction from the Court of Appeal as to how MMBA, EERA and the Education Code interrelate when concerned with San Francisco Civil Service employees who are also "employees of the District.

DISCUSSION

In ruling on judicial review requests, the Board's authority is derived from EERA section 3542(a) which states, in pertinent part:

No employer or employee organization shall have the right to judicial review of a unit determination except: (1) when the board in response to a petition from an employer or employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint.
(Emphasis added.)

¹EERA is codified at Government Code section 3540 et seq.

Under PERB Regulation² 32500 (c), the Board has the sole discretion to determine whether a case is "one of special importance." The regulation states, in pertinent part:

(c) The Board may join in a request for judicial review or may decline to join, at its discretion.

The Board's considerable discretion in the determination of appropriate units is demonstrated by the very limited circumstances under which judicial review of its unit decisions may be obtained. (San Diego Unified School District (1981) PERB Order No. JR-10.)

The reasons for PERB's strict standard is to ensure that the fundamental rights of employees to form, join and participate in the activities of employee organizations is not abridged. Further, the standard is also employed to prevent employee organizations' rights from being inhibited because if unit determinations by PERB are subject to numerous legal challenges, delays of implementation of the Board's decisions could occur. (State of California (Department of Personnel Administration) (1993) PERB Order No. JR-15-S.)

On few occasions, the Board has joined in a request for judicial review where it found "special importance" because: (1) it was a novel issue; (2) primarily involved construction of a statutory provision unique to EERA; and (3) was likely to arise

²PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

frequently." (Los Angeles Unified School District (1985) PERB Order No. JR-13.)

This standard has not been met. Local 261 has attempted to redefine its argument from the application of EERA unit criteria to the "interrelationship between the EERA and the MMBA." Although the District and city are viewed as "joint employers" this does not lead to the conclusion that the EERA's unit criteria applied is invalid. The Board, in determining the appropriateness of a unit, is bound to consider only the criteria set forth in EERA. (San Francisco.) As such, the Board does not view the issues raised in this case as meeting the "special importance" standard of EERA section 3542(a).

ORDER

Based upon the foregoing, it is hereby ORDERED that the request for judicial review of San Francisco Community College District (1994) PERB Decision No. 1068 is DENIED.

Members Garcia and Johnson joined in this Decision.